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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,085	01/25/2002	Richard A. West	X-13215	8105
7590	09/09/2004		EXAMINER	
E. KENT DANIELS JR FAY, SHARPE, FAGAN, MINNICH & MCKEE LLP 1100 SUPERIOR AVENUE 7TH FLOOR CLEVELAND, OH 44114			EVANS, ROBIN OCTAVIA	
			ART UNIT	PAPER NUMBER
			3742	
DATE MAILED: 09/09/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/055,085	WEST, RICHARD A.
	Examiner Robin O. Evans	Art Unit 3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 07 June 2004.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-29 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-29 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. _____.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Response to Amendment

1. The amendment presented in communication filed June 7, 2004 is acknowledged.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Hunter, Jr. (6,126,766).

Hunter, Jr. shows an apparatus for depositing a layer of foamed plastic material having depositing means 34, support means 2, moving means 50, wheels 4, control means 11 and electric drive motor 6. Note that Hunter, Jr. discloses in column 5, lines 21-26, that the amount of product sprayed on the surface per unit of sprayed area is set by selecting the ground speed of the vehicle.

As to the limitation recited in claims 1 and 15 that the “material is deposited on said underlying surface to slope uniformly relative thereto along at least a portion...”, please note that Hunter discloses in the abstract a method for “uniformly applying coatings at appropriate thickness and pitch upon a surface”

Figure 6, shows the speed of the vehicle decreasing as it travels from point A to point E as described in column 7, lines 1-10. Since the vehicle does sweeps back and forth with the boom changing directions and the flow rate remaining constant, the speed of the vehicle would

inherently have to increase to obtain the same spray pattern on the subsequent sweep. Therefore the device of Hunter meets the limitation of the speed increasing as recited in claim 7.

The apparatus shown by Hunter, Jr. performs the method steps as recited during operational use of the device.

Response to Arguments

4. Applicant's arguments filed June 7, 2004 have been fully considered but they are not persuasive.

The examiner does not agree with applicant's argument that Hunter does not provide a slope uniformly relative to the underlying surface, since Hunter discloses in the abstract that the applicator provides a uniform coating. Therefore the coating will be uniform for at least a portion (as recited by the claim) until the user changes the rate of speed.

As to the argument that Hunter does not vary the speed of his machine as the machine moves along the path, Hunter discloses in column 7, lines 1-10 that the strip going from A to E in one sweep where the speed for layer A is fastest and the speed is reduced for each successive layer. Therefore if the strip is made during a single pass the speed of the machine must change while the machine is moving.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

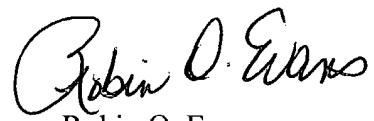
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin O. Evans whose telephone number is (703) 305-5766. The examiner can normally be reached on Monday-Thursday 6:30 am- 5:00 pm.

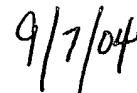
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (703) 308-2087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robin O. Evans
Primary Examiner
Art Unit 3742

roe



9/1/04